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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, ET AL., *Petitioners*

v.

ANNA MAE ALLEN, ET AL.

On Writ Of Certiorari To The Supreme Court Of The State Of North Carolina

Brief For The American Federation Of Labor And Congress Of Industrial Organizations As Amicus Curiae

Interest Of The AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The AFL-CIO is primarily a federation of national and international unions, including the petitioner unions. The total membership of unions affiliated with the AFL-CIO is approximately 13 million. This brief is submitted because of the importance to all unions of the issue in this case.

The courts below enjoined the enforcement of union shop agreements, subject to the proviso that the petitioner unions may show what portion of dues is used to meet collec-

tive bargaining costs, and may enforce the agreements as to that portion. (R. 22-23. 219-220.) The decision below seems realistically to confront the unions with the option of giving up the union shop or of narrowly restricting their activities to collective bargaining, and abandoning other effectual means and traditional activities, such as in the legislative and political fields, undertaken for the benefit of their membership.

While the union shop agreements involved in this case were entered into under § 2, Eleventh of the Railway Labor Act, as amended, that statutory provision is virtually identical with and was copied from § 8(*a*)(3) of the National Labor Relations Act, as amended. Thus the decision in this case may affect the validity of or union disbursements under all union shop agreements.

SUMMARY OF ARGUMENT

I

The judgment of the trial court, which was affirmed by an equally divided State Supreme Court, is irreconcilable with *International Association of Machinists* v. *Street*, 367 U.S. 740. In that case the Court construed § 2, Eleventh of the Railway Labor Act as forbidding unions to spend dues money collected under a union shop agreement (1) over an employe's objection (2) for political causes (3) which he opposed. All three of these elements must be present to render a disbursement illegal.

The proof in the present case does not meet these criteria. All that the evidence establishes, and all that the jury found, is that the unions use dues for political and legislative purposes, generally. There is no testimony that any union spent money for any particular political cause opposed by any individual plaintiff. This case thus parellels *Lathrop* v. *Donohue*, 367 U.S. 820, where the Court affirmed dismissal

of the complaint because the plaintiff had failed to establish that dues money had been expended for "particular political causes" over his opposition.

II

We respectfully urge that the Court reconsider its decision in *Street*, and that it adopt the views expressed in the dissenting opinion of Justice Frankfurter in that case.

The interpretation given § 2, Eleventh of the Railway Labor Act rests on the legislative history of that provision, plus the avoidance of constitutional issues. In its opinion the Court flagrantly misconstrued the legislative history, and no constitutional issues of substance are presented even if the statute is read as it is written.

The Court's conclusion that Congress enacted the 1951 amendment to the Railway Labor Act (§ 2, Eleventh) solely because collective bargaining and grievance adjustment in the railroad industry are more expensive than in other industries is flatly contradicted by the legislative history. That history shows that the 1951 amendment simply added to the Railway Labor Act the union shop provisions of the Taft-Hartley Act (1947), and that the Congress enacted the amendment simply because it thought it only fair that unions in the railroad and the airline industries have the same rights to negotiate union security agreements as unions in other industries.

Insofar as the interpretation given § 2, Eleventh in *Street* rests on the avoidance of constitutional doubts, it is similarly lacking in support.

None of the opinions in *Street* or in *Railway Employes' Department* v. *Hanson*, 351 U.S. 225, point to any constitutional issue so substantial as to warrant the tortured construction given § 2, Eleventh. None of the opinions even make it clear how governmental action is involved, either in the execution of union shop agreements or in the spending of dues money collected thereunder.

Hanson seems to find governmental action in the fact that § 2, Eleventh overrides inconsistent state law. However, a federal statute providing that an activity shall not be regulated by the States does not without more invest the activity with governmental character.

The dissenting opinion of Justice Black in *Street* and the opinion of Justice Brennan in *Lathrop* v. *Donohue* seem to equate a statute authorizing unions and employers to institute a union shop by mutual agreement with the imposition of a closed shop by government fiat. However, there is a vast difference between the two. Unions and employers have been free throughout most of history to negotiate union shop agreements, and the 1951 amendment simply restored to them the freedom in this respect which they had enjoyed up to 1934.

The opinion of the Court in *Street* seems to say that constitutional problems would arise if § 2, Eleventh were construed as vesting unions with unlimited power to spend dues money collected under union shop agreements, and that § 2, Eleventh should therefore be construed as restricting the power of unions to spend such dues money. However the power of a union to spend money is not derived from statute, and there was accordingly no need to interpret § 2, Eleventh as authorizing the disbursement of funds. Hence there was no constitutional problem to be avoided, and the interpretation of § 2, Eleventh as restricting unions in their use of funds has no basis either in the avoidance of constitutional doubt or in the language or history of the provision.

If the use of union funds is to be subjected to additional regulation, it is for the Congress to enact the appropriate legislation. Congress has placed some restrictions on the use of union funds, and has considered but rejected other restrictions rather like those imposed by the Court in *Street*. In writing its own restrictions on the use of union funds under the thin guise of interpreting a statute, the Court

has, we respectfully submit, usurped a function of Congress, and one that the Congress is better qualified than the Court to discharge.

A final possible basis for concluding that a collective bargaining agreement involves some degree of governmental action is the status as exclusive bargaining representative which the National Labor Relations Act and the Railway Labor Act confer on unions chosen by a majority of the employes. However, if the binding of dissenters by a collective agreement constituted governmental action, not only union security provisions but numerous other provisions would have to meet constitutional tests. That concept would give rise to insuperable difficulties, and it was rejected by the Court long ago.

In the language of the well-worn cliche, the Court's decision in *Street* opens Pandora's box. We respectfully urge that it close it.

ARGUMENT

I

The Trial Court's Judgment is Irreconcilable with Street and Hanson.

The judgment of the trial court enjoins the defendants from placing any compulsion upon the plaintiffs to join the defendant unions, or pay money to them, subject to the conditions that the unions may present proof to the Court "as to what portion of the periodic dues, initiation fees and assessments, which they desire to collect from the plaintiffs, will be reasonably necessary and related to collective bargaining between the defendant Unions and the plaintiffs' employer . . . and upon the making of such proof . . . to the satisfaction of the Court," the injunction will cease to apply to that portion of the dues, fees and assessments. (R. 23.) This order was affirmed on appeal by an equally divided court. (R. 217-218.)

The immediate question is whether the trial court's order comports with the decisions of this Court in *International Association of Machinists* v. *Street*, 367 U.S. 740, and *Railway Employes' Department* v. *Hanson*, 351 U.S. 225.[1] We submit that it does not.

In the *Hanson* case this Court upheld the constitutionality of § 2, Eleventh, of the Railway Labor Act, which permits unions and employers to enter into a specified type of union shop agreement. The Court, however, reserved decision as to a case where "the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment." (351 U.S. at 238.)

In *Street* the Court amplified what it meant by using the required payment of dues, etc., "as a cover for forcing ideological conformity." It declared that § 2, Eleventh would be of doubtful constitutionality if it were construed as "vesting the unions" with the "power" "over the employee's objection, to use his money to support political causes which he opposes." 367 U.S. at 768. Therefore, the Court held (367 U.S. at 768-769):

> "* * * § 2, Eleventh is to be construed to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes."

This rationale, we submit, invalidates only expenditures (1) over an employe's objection (2) for political causes (3) which he opposes. All these elements must be present to render a disbursement illegal as "forcing ideological con-

[1] At the outset of this litigation in 1953, which was prior to this Court's decision in *Hanson*, the trial court issued a restraining order unconditionally enjoining enforcement of the union shop agreements. (R. 5-7.) In 1957, after this Court's decision in *Hanson* but prior to its decision in *Street*, the trial court issued a premanent injunction conditioned as stated above. (R. 17-19.) This order was affirmed, following *Street*, by an equally divided State Supreme Court. (R. 218.)

formity." It is the expenditure, not the collection of dues, for a particular political or legislative purpose over the employe's objection that is illegal. "In other words, appellees' grievance stems from the spending of their funds for purposes not authorized by the Act in the face of their objection, not from the enforcement of the union-shop agreement by the mere collection of funds." 367 U.S. at 771.

The testimony in this case does not begin to meet the tests laid down in *Hanson* and *Street* as invalidating a disbursement. The special findings of the jury simply are that the petitioner unions use dues for political and legislative purposes, and, in the case of one union, death benefits, which are not reasonably related to collective bargaining. (R. 22.)

The real basis of this suit is not that the plaintiffs' dues money will be used for particular legislative causes or political candidacies which they oppose, thereby imposing "ideological conformity" on them, but simply that the plaintiffs are opposed to unions in toto, and object to being required to join. That is all that the original complaint alleged, and the only relief the complaint specifically seeks is to enjoin enforcement of the union shop agreements. (R. 2-4.)

After this Court decided *Hanson*, the complaint was amended to allege, *inter alia*, that the dues, etc., the plaintiffs will be required to pay "have been and are (sic) and will be" used for "the election of candidates for public and governmental office whom the plaintiffs oppose and the defeat of other political candidates whom the plaintiffs support and the enactment of legislation which the plaintiffs oppose and the defeat of other legislation which the plaintiffs' support." (R. 15.)[2] However, plaintiffs made no effort to prove these allegations.

Each plaintiff did testify that he (or she) was not a member of a union (R. 25, 27, 29, 33, 34, 35, 39, 43, 45, 47, 48, 71),

[2] The prayer for relief was not amended.

and did not wish to join one (R. 25, 27, 29, 32, 34, 35, 39, 43, 45, 47, 48, 71), and that he opposed the union shop (R. 26, 27, 29, 33, 34, 35, 42, 44, 46, 47, 48, 72). Most of the plaintiffs testified that they were opposed, in general, to the use of union dues to support or oppose legislation or candidates for office (R. 26, 28, 33, 34, 35, 42, 44, 46, 47, 48, 72), and some of them testified that they opposed the use of dues for payment of death benefits (R. 26, 48, 72). Three of the plaintiffs expressed hostility to collective bargaining (R. 45, 49-50, 72-74. No plaintiff testified that the union position on any particular legislative issue was at variance with his own, except that some of them stated that they opposed the union shop which they assumed that the unions supported (R. 27, 29, 32, 37). No plaintiff testified that the union supported any specific candidate he opposed, or vice versa. The plaintiffs who were questioned on the point acknowledged that they did not know what causes or candidates the unions supported, apart from their presumed support of the union shop (R. 27, 32, 37, 38).

Essentially the plaintiffs asked that enforcement of the union security agreements be enjoined simply on the ground that the unions acknowledge that they spend money for legislative and political purposes (R. 62-67, 83-101), and in the case of one union, for death benefits (R. 79).

The fact that the unions engage in, and spend money on, political and legislative causes, whereas the plaintiffs—who oppose unions in toto—do not think that they should, hardly amounts to the unions "forcing ideological conformity." The plaintiffs do not even know, in general or in particular, what the unions' ideology is. (It is true that the testimony of each of the plaintiffs was quite similar, but we doubt that their ideological conformity derived from the prospect of paying dues.)

The decision below is directly at odds with the ruling of this Court in *Street* as to "The Appropriate Remedy" (367 U.S. at 771-775). Justice Black, dissenting, proposed a de-

cree somewhat like that issued by the trial court here. Justice Black urged a decree which "would simply forbid the use of the union-shop contract to bar employment of the six protesting employees so long as the unions do not discontinue the practice of spending union funds to support any causes or doctrines, political economic or other, over the expressed objection of the six particular employees." 367 U.S. at 794.

However, Justice Black's view did not prevail. The Court declared that "an injunction against enforcement of the union shop itself through the collection of funds is unwarranted." 367 U.S. at 772. Instead the Court approved two remedies as appropriate (367 U.S. at 774-775):

> "One remedy would be an injunction against expenditure for political causes opposed by each complaining employee of a sum, from those moneys to be spent by the union for political purposes, which is so much of the moneys exacted from him as is the proportion of the union's total expenditures made for such political activities to the union's total budget. * * * A second remedy would be restitution to each individual employee of that portion of his money which the union expended, despite his notification, for the political causes to which he had advised the union he was opposed."

Even under Justice Black's view, however, the decision below could not be sustained, for the plaintiffs here have not expressed objections to any particular uses of union funds.

That the courts below misconstrued *Street* is further apparent from the decision in the companion case, *Lathrop* v. *Donohue*, 367 U.S. 820, involving the Wisconsin integrated bar. In that case the opinion of Mr. Justice Brennan, in which three other Justices joined, points out (367 U.S. at 845-846):

> "* * * Nowhere are we clearly apprised as to the views of the appellant on any particular legislative issues on which the State Bar has taken a position, or as to the way in which and the degree to which funds com-

> pulsorily exacted from its members are used to support the organization's political activities."

This opinion goes on to note that (just as in the present case) the complaint alleged that the State Bar used its funds in opposition to legislation which was favored by the plaintiff, but (just as here) this allegation was not proved, for (367 U.S. at 846) "there is no indication of the nature of this legislation, nor of appellant's views on particular proposals."

Finally, the opinion states (367 U.S. at 847):

> "* * * This statement of the question [i.e., in appellant's brief], just as does his complaint, appears more a claim of the right to be free from compelled financial support of the organization because of its political activities, than a challenge by appellant to the use of his dues money for particular political causes of which he disapproves."

Accordingly the Court affirmed the dismissal of the complaint and declined, on the record before it, to rule on whether "appellant may constitutionally be compelled to contribute his finanical support to political activities which he opposes." 367 U.S. at 847-848.

Here, just as in *Lathrop* v. *Donohue*, plaintiffs are presenting more a claim of the right to be free from compelled financial support of the unions because of the unions' political activities, than a challenge to the use of dues money for particular political causes of which the plaintiffs disapprove. Thus *Lathrop* v. *Donohue* requires reversal of the decree below just as does *Street*.

II

The Street Decision Should be Overruled

We are aware that the Court's decision in *Street* was rendered after long deliberation and after reargument. However, the Court's interpretation of the 1951 amendment to the Railway Labor Act (§ 2, Eleventh) is based on the

legislative history of the amendment, plus the avoidance of constitutional doubts. Since none of the parties to the litigation conceived that the amendment could be given the interpretation which the Court ultimately gave it,[3] the legislative history was not fully briefed or argued.

We believe that we can show beyond cavil that the Court flagrantly misconstrued the legislative history of the 1951 amendment.

Insofar as the decision in *Street* rests on the avoidance of constitutional issues it is, we submit, likewise untenable, and is inconsistent with the decision rendered the same day in *Lathrop* v. *Donohue*. No constitutional issues of substance are presented even if the statute is read as it is written.

We therefore urge that the Court reconsider its decision in *Street*, and that it adopt the views expressed in the dissenting opinion of Justice Frankfurter in that case.[4]

A. The Legislative History of the 1951 Amendment

The Court's opinion in *Street* contains a lengthy review of the legislative history of the 1951 amendment (367 U.S. at 750-764). The Court quotes the testimony of Mr. George M. Harrison before the House Committee to the effect that both collective bargaining and grievance adjustment in the railroad industry are more expensive than in any other industry, and the Court declares (367 U.S. at 762): "This argument was decisive with Congress." According to the

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[3] As stated by Mr. Justice Frankfurter, dissenting (367 U.S. at 803):

> "None of the parties in interest at any time suggested the possibility that the statute be construed in the manner now suggested."

[4] The opinion of the Court in *Street* has not evoked the admiration of legal scholars. Professor Wellington, for example, describes it as "a slick but shallow performance." Wellington, *Machinists* v. *Street*: Statutory Interpretation and the Avoidance of Constitutional Issues, Sup. Ct. Rev. (1961) 49, 73.

Court (367 U.S. at 763-764) "this history clearly points" to the conclusion that the amendment

> "contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements."

Conversely, the amendment did not contemplate, the Court declares, any more general use of union dues—at least not their use for political causes over the objections of employees opposed to those causes.

The Court's review of the legislative history blandly overlooks the obvious. It is apparent on the face of the 1951 amendment of the Railway Labor Act that its unusual terminology was lifted from § 8(a)(3) of the Taft-Hartley Act, and that its purpose was to place unions in the railroad and airline industry on a parity (§ 14 (b) apart) with unions in other industries.

In its review of the legislative history in the *Street* opinion, the Court, however, ignores the Taft-Hartley Act. It treats railway labor legislation as if it were sui generis, as if its development were unrelated to labor legislation developments affecting industry generally. On the basis of this rewriting of history the Court gives the 1951 amendment a peculiar and restrictive interpretaton unrelated to its language or purpose.

The Court's review of legislative history skips from the 1934 revision of the Railway Labor Act, which prohibited union security agreements, to the 1951 amendment, which permitted them. The Court ignores the fact that in 1935 the Wagner Act was passed containing provisions (§ 8(3)) which permitted the closed shop; that in 1947 the Taft-Hartley Act revised these provisions (§ 8(a)(3)) to permit a type of union shop; and that the 1951 amendment to the Railway Labor Act derives directly from the Taft-Hartley Act.

What is apparent on the face of these laws is confirmed

by even the most cursory examination of the legislative history.

The amendment originated as a Senate bill. The Report of the Senate Committee states (S. Rep. No. 2262, 81st Cong., 2d Sess., pp. 2-3):

> "The present prohibitions against all forms of union security agreements and the check-off were made part of the Railway Labor Act in 1934. They were enacted into law against the background of employer use of these agreements as devices for establishing and maintaining company unions. * * *
>
> * * *
>
> "Since the enactment of the 1934 amendments, company unions have practically disappeared. Labor organizations representing employees in industries covered by the Railway Labor Act now seek to gain for themselves the right to bargain collectively with regard to union-shop agreements and check-off. *This right is possessed by unions representing employees in industry generally. Your Committee is of the opinion the right should now be extended to labor organizations subject to the Railway Labor Act.*" (Italics added.)

The Report of the House Committee is quite similar. Following the "free rider" passage quoted by the Court in *Street* (367 U.S. at 762), the Report continues (H. R. Rep. No. 2811, 81st Cong., 2d Sess., p. 4):

> "The principle of authorizing agreements for the union shop and the deduction of union dues has now become firmly established *as a national policy for all industry subject to the Labor-Management Relations Act of 1947*, including transportation industries other than railroads and airlines. * * *
>
> "*No sound reason exists for continuing to deny to labor organizations subject to the Railway Labor Act the right to negotiate agreements with railroads and airlines of a character permitted in the case of labor organizations in the other large industries of the country.*" (Italics added.)

Apart from the general "free rider" argument set forth in the House Report and quoted in *Street*, neither Committee Report contains a word about the "costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes" (367 U.S. at 764) which the Court so stresses in *Street*. The Court's conclusion (367 U.S. at 762) that the testimony of Mr. Harrison that bargaining and contract administration in the railroad industry are peculiarly expensive "was decisive with Congress" is startling. Neither Mr. Harrison's testimony nor the substance of his argument is adverted to in either Committee Report. To the contrary, the Committees were simply concerned to place railroad unions on a parity with other unions, by amending the Railway Labor Act so that it would parallel the Taft-Hartley Act.

The congressional debates, too, show precisely that motivation, and no other.

Senator Hill handled the bill on the floor of the Senate. He said (96 Cong. Rec. 15736):

> "Senate bill 3295 * * * would relax the prohibitions contained in paragraphs fourth and fifth of the Railway Labor Act by *restoring* to carriers and their employees the right to bargain collectively with regard to the union shop and the check-off. *In the limitations imposed and the nature of the right granted, the bill closely follows the pattern of parallel provisions of the Taft-Hartley Act.*" (Italics added.)

Subsequenty he reiterated (96 Cong. Rec. 15737):

> "The bill, as I have stated, is designed merely to extend to employees and employers subject to the Railway Labor Act rights now possessed by employees and employers under the Taft-Hartley Act in industry generally. Its pattern is that of comparable provisions of the Taft-Hartley Act and no substantial reason exists to warrant the continued denial to the employees and employers of our great railroad and airline industries of the right to bargain collectively with respect to the union shop and check-off."

Senator Taft, the ranking minority member of the Committee, advanced precisely the same ground for enacting the bill. He said (96 Cong. Rec. 16267):

> "In effect, *the bill inserts in the railway mediation law almost the exact provisions*, so far as they fit, *of the Taft-Hartley law*, so that the conditions regarding the union shop and the check-off are carried into the relations between railroad unions and the railroads. I believe that those provisions have worked satisfactorily under the Taft-Hartley law. I feel that they would work well in connection with the Railway Labor Act." (Italics added.)

The Senate debate does not in the slightest degree support the notion that in authorizing unions in the railroad and aircraft industries to negotiate union shop agreements the Senate was influenced by the peculiarly complex and expensive nature of collective bargaining in the railroad industry. To the contrary, the Senate appears to have been motivated solely by the belief that fairness required that those unions be given the same rights as had been given other unions by Taft-Hartley.

The House debates reveal substantially the same picture. The bill was handled on the House floor by Representative Beckworth. In his initial presentation he said (96 Cong. Rec. 17047):

> "One of the pieces of legislation that was considered most carefully in this body was the so-called Taft-Hartley bill. It is the contention of Senator Taft, and I expect to read one of his statements about this legislation, that, to some extent at least, *this particular measure simply carries into the provisions of the Railway Labor Act some of the provisions which already are in the Taft-Hartley law.*" (Italics added.)

Representative Beckworth's explanation of the bill was followed by one of Representative Clare Hoffman's standard tirades against unions. In the course of his Philippic Congressman Hoffman said (96 Cong. Rec. 17049-17050):

> "There is one other piece of advice, unasked, I am giving to the railway unions. It is this: That they should quit levying political assessments or assessments for the benefit of some union officials and, through the use of this legislation now before us, force their members to meet those assessments—especially those for political purposes—as a condition of an opportunity to earn a livelihood."

It will be noted that Representative Hoffman did not suggest that the bill would *require* the unions to follow his advice. Representative Hoffman went on to explain that he opposed both the closed shop and the union shop, and he asked himself (p. 17050), "Why, then, will I vote for the bill"? His answer:

> "* * * because I do not want the railway unions to say, even though it would not be true, that I refused to extend to their membership the opportunity for a union shop which was given to other employees by the Taft-Hartley Act."

Representative Wolverton spoke next. He first advanced the standard argument that justice and fairness required that railroad unions be given the rights given other unions by Taft-Hartley (96 Cong. Rec. 17050):

> "As I see it, the matter before us is very simple. It is merely a question of whether the Congress desires to continue to deny to railway labor the right by collective bargaining with management to negotiate union-shop agreements when we have protected by the Taft-Hartley Act that right in all industries except those subject to the Railway Labor Act.
>
> * * *
>
> "I do not see how in justice and fairness we can continue to deny this right to the employees in our great railroad and airline industries and at the same time grant such rights to all others, as we do under the provisions of the Taft Hartley Act."

Subsequently Representative Wolverton did state—and as far as we can find it was the only time the point was

made during the Congressional debates—that the costs of the railroad brotherhoods were particularly high because of the complex collective bargaining processes in that industry, and because their members were scattered. He then, however, reverted to his initial point that the bill simply incorporated the Taft-Hartley provisions in the Railway Labor Act. Various other Congressmen likewise advanced this reason for supporting the bill, e.g., Biemiller, Brown, Hugh Scott (17055), Heselton (17056), Crosser (17057), Linehan (17058), and Vursell (17061).

Rarely has there been such Congressional unanimity as to the reason for passing a bill. Rarely has the Court so flagrantly twisted legislative history as it did in the *Street* case. The Court's performance calls to mind the blind men and the elephant, and if the simile is inexact it is because the Court seized upon an aspect of the legislative history which is hardly there at all.

Congress intended to give unions in the railroad and airline industries exactly the same rights with respect to union security agreements that unions in other industries had under Taft-Hartley. The Court's conclusion in *Street* that the Congress intended only to permit unions in the railroad and airline industries to collect from dissenters a pro rata share of collective bargaining costs, and because bargaining in the railroad industry is peculiarly expensive, requires not merely a selective editing of history but a drastic rewriting.

As Justice Frankfurter demonstrated in his dissent, American trade unions in general and railroad unions in particular have engaged in political and legislative activity for decades and on a large scale.[5] It can hardly be suggested

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[5] The Brief Amicus for the AFL-CIO in *Street* was comprised principally, as the Motion for Leave to File stated, of

"an outline of historical and economic data establishing that political activity has traditionally been an integral and vitally essential feature of the workers' program for improving their lot through organized action."

that the Congress was unaware of this activity either when it enacted the Taft-Hartley Act in 1947 or the amendment to the Railway Labor Act in 1951.[6] To say that Congress nevertheless had the hidden purpose in enacting the 1951 amendment, that dues collected under union security agreements should not be used for political or legislative purposes, or should only be used for collective bargaining costs, is little short of preposterous.[7]

Insofar as the interpretation given § 2, Eleventh in *Street* rests on the legislative history of the 1951 amendment, it is without visible means of support.

B. The Constitutional Issue

Insofar as the interpretation given § 2, Eleventh in *Street* rests on the avoidance of constitutional doubts, it is equally unsupported.

Since the opinion of the Court rests indirectly, and the concurring opinion of Justice Douglas and the dissenting opinion of Justice Black directly, upon the First Amendment, the question arises as to how the 1951 amendment abridges the freedom of speech or assembly, or might if not given the construction put on it by the Court. The opinion of the Court does not explicity answer this question: it does not identify the monster whose menace leads it to take such violent evasive action.

Hence we are forced to speculate as to what comprises the governmental action which gives, or might give, rise

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[6] The opinion of the Court in *Street* states (367 U.S. at 767):

"We may assume that Congress was also fully conversant with the long history of intensive involvement of the railroad unions in political activities."

[7] During the Senate Committee hearings, two railroad officials did urge that restrictions be placed on the use of dues and assessments, such as for political purposes or death benefits. (Hearings on S. 3295, 81st Cong., 2d Sess., on May 23, 1950, pp. 316-317.) The proposal evidently did not commend itself to the Committee.

to a constitutional question under the First, or perhaps the Fifth, Amendment.

1. *The Superseding of State Law.* In *Hanson* the Court seemingly held that the 1951 amendment to the Railway Labor Act imbued contracts made thereunder with the quality of governmental action, justiciable under the First and Fifth Amendments, because the amendment overrode inconsistent state laws—the so-called "right-to-work" laws. See 351 U.S. at 232-233.

If it is the superseding of inconsistent state law by the 1951 amendment which gives union security contracts executed thereunder an aspect of governmental action, it would follow that only such contracts in right-to-work states present any constitutional question. *Otten* v. *B. & O. Railroad*, 205 F. 2d 58 (2d Cir. 1953), *aff'd sub nom. Otten* v. *Staten Island Rapid Transit Ry.*, 229 F. 2d 919 (2d Cir. 1956), *cert. denied*, 351 U.S. 983. No constitutional issue would be presented by state laws permitting union security agreements —or even imposing the closed shop. But cf. *Lathrop* v. *Donohue*.

However, this rationale, that it is the superseding of state law that comprises governmental action, is not so much as hinted at in any of the opinions in *Street*, and in any event it seems wholly untenable. A federal statute declaring that an activity shall not be regulated by the states does not, without more, invest the activity with governmental character. The Taft-Hartley Act has, under familiar doctrines of preemption, freed a wide range of union and employer activities from state regulation, but it will hardly be suggested that all of those activities are thereby rendered governmental.

2. *The Imposition of the Union Shop by Law.* The dissenting opinion of Justice Black in *Street* seems to treat the 1951 amendment as if it imposed the union shop by governmental fiat, instead of simply relaxing existing legal restraints on the execution and enforcement of such agree-

ments.* And while the opinion of the Court in *Street* does not employ this approach, the opinion of Justice Brennan in *Lathrop* v. *Donohue* declares that "In our view the case presents a claim of inpingement upon freedom of association no different from that which we decided in" *Hanson*. 367 U.S. at 842. Since *Lathrop* v. *Donohue* involved an integrated bar imposed by judicial fiat, this statement seems, at least superficially, to equate a permissive union shop with a government imposed closed shop.

We submit that the two are very different. Throughout most of the existence of the United States unions and employers have been free to negotiate agreements, if they saw fit, providing for a closed or union shop. This freedom was taken away by Congress in the case of the railroad and airline industries in 1934, and was restored in 1951. As the House Report (p. 2) explained, the bill would "reinstate union security and check-off arrangements as appropriate subjects for collective bargaining" in the railroad and airline industries.

As the Court said in *Colgate-Palmolive-Peet Co.* v. *NLRB*, 338 U.S. 355, 362-363:

> "'One of the oldest techniques in the art of collective bargaining is the closed shop. It protects the integrity of the union and provides stability to labor relations. To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act. Congress knew that a closed shop would interfere with freedom of employees to organize in another union and would, if used, lead inevitably to discrimination in tenuer of employment. Nevertheless

* The dissenting opinion of Justice Black states that although the amendment "is permissive in form," Congress was aware that it would result in the establishment of union shop throughout the railroad industry. 367 U.S. at 785, note 13. Thereafter this opinion employs such terminology as "federal compulsion" (789), "this Act of Congress is being used as a means to exact money" (790). "dues extorted from an employee by law" (790), and "forced under authority of a federal statute" (796).

> * * * Congress inserted the proviso of § 8(3). It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute."

The Court has, accordingly, always regarded legislation permitting the closed or union shop as presenting simply a question of policy for the Congress and not a constitutional question for the Court.

On the other hand, a statute requiring membership in a union, or a court rule requiring membership in a bar association, clearly do involve governmental action, and hence may present a constitutional issue, just as does a statute prohibiting the closed or union shop. *Lincoln Federal Labor Union* v. *Northwestern I. & M. Co.*, 335 U.S. 525.

Certainly the Congress has regarded a permissive and a mandatory union shop as very different.

The Senate Committee Report on the 1951 amendment to the Railway Labor Act declared (S. Rep. No. 2262, 81st Cong., 2d Sess, p. 1):

> "The bill would not require the execution of union shop agreements; it merely permits the carriers and the representatives of their employees, through the voluntary process of collective bargaining, to include the union shop provisions in their collective-bargaining agreements."

The House Report contained a similar declaration, and statements that the bill was permissive and not compulsory were repeated endlessly and never denied during the debates. No opponent of the bill suggested that it was equivalent to government imposition of the union shop.

In sharp contrast, in 1947, during the consideration of the union shop provisions of Taft-Hartley, an amendment was offered in the Senate that "an employer shall be required to accept and establish a union shop" if three-fourths of the employees vote in favor of it.[9] Senator Taft attacked

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[9] 93 Daily Cong. Rec. 5077; Legislative History of the L.M.R.A., V. 2, p. 1400.

the proposed amendment as unconstitutional because it would make the union shop mandatory rather than leave it to negotiation,[10] and the proposal was defeated.[11] The Senate then proceeded to approve, overwhelmingly, the permissive union shop provisions of Taft-Hartley,[12] which were in 1951 transported into the Railway Labor Act.

The undoubted fact that union security agreements are prevalent, both under the Railway Labor and Taft-Hartley Acts, falls far short of implying that those statutes compel their execution. Agreements for the final and binding arbitration of disputes arising during the life of a contract are equally prevalent, but they are not compelled by law either. In both instances the prevalence is due not to any compulsion in the law but to the fact that the parties find the provisions mutually advantageous, or that one party finds a provision so advantageous that it offers inducements to the other party sufficient to procure its acquiescence.

In *Hanson* the Court said (351 U.S. at 231):

> "The union shop provision of the Railway Labor Act is only permissive. Congress has not compelled nor required carriers and employees to enter into union shop agreements."

We submit that that was a correct statement, and that governmental action cannot be read into the purely permissive 1951 amendment. As regards this aspect, it is surely anomolous that the Court affirmed dismissal of the complaint in *Lathrop* v. *Donohue*, while it remanded *Street* for further consideration.

3. *The Authorization to Spend Dues Money.* While, as stated, the opinion of the Court is quite reticent about

[10] Senator Taft inserted in the Record a memorandum, prepared by Gerard D. Reilly, on the constitutionality of the amendment. 93 Daily Cong. Rec. 5079; Leg. Hist., V. 2, p. 1403. The memoradum attacked the proposal as violative, because of its mandatory character, of both the rights of employers and of minority employees.

[11] 93 Daily Cong. Rec. 5081; Leg. Hist., V. 2, p. 1408. The amendment was rejected by voice vote. Only two Senators spoke in favor of it.

[12] 93 Daily Cong. Rec. 5091; Leg. Hist., V. 2, p. 1428.

identifying the governmental action which might be unconstitutional, it seems to say that the 1951 amendment might be invalid if construed as "vesting the unions with unlimited power to spend exacted money." 367 U.S. at 768. Therefore

> "we hold • • • § 2, Eleventh is to be construed to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes." 367 U.S. at 768-769.

This identification of the source of the governmental action seems an even clearer case of mistaken identity than those discussed earlier. There is no need to interpret the 1951 amendment as authorizing unions to spend money: hence the asserted constitutional difficulty is mythical.

The power of a union to spend money is not derived from statute, any more than in the case of any other unincorporated association. When they spend money unions engage in a private, not a governmental activity. That private activity may be subject to governmental regulation,[13] but no affirmative governmental authorization is needed to engage in it. That the funds derived from dues paid by employees subject to a union shop agreement does not mean that any statutory authorization is needed for disbursement of the funds, though it may (or may not) argue for legislative restrictions on the uses to which the funds may be put. No union ever had any statutory authorization for the expenditure of funds, whether or not derived from dues paid by persons subject to union security clauses, from colonial time to date, until in *Street* the Court put its peculiar gloss on § 2, Eleventh of the Railway Labor Act.

[13] Cf. the following statement in *Street* (367 U.S. at 773):

"• • • Whatever may be the powers of Congress or the States to forbid unions altogether to make various types of political expenditures, as to which we express no opinion here, many of the expenditures involved in the present case are made for the purpose of disseminating information as to candidates and programs and publicizing the positions of the unions on them. As to such expenditures an injunction would work a restraint on the expression of political ideas which might be offensive to the First Amendment."

Since there was no need to interpret § 2, Eleventh as authorizing unions to spend funds, there was no constitutional problem to be avoided. The interpretation of § 2, Eleventh as restricting unions in their use of funds thus has no basis either in the avoidance of constitutional doubts, or in its language, or in its legislative history.

The Court's rationale in *Street* (if we correctly interpret it) poses a number of difficulties for the future.

The Court has read into § 2, Eleventh both an authorization to spend union shop dues money for some purposes over the objections of dissenters, and restrictions on their use for other purposes over the objections of dissenters.

If the Court adheres to *Street*, the legality of every challenged disbursement of union shop dues money will be determined by § 2, Eleventh—as "interpreted" by the courts from time to time.[14] The statutory language will provide no guide, for it never occurred to Congress that the provision would be read as regulating the uses of union dues.[15]

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[14] In *Street* the Court said (367 U.S. at 769-770):

"We express no view as to other union expenditures objected to by an employee and not made to meet the costs of negotiation and administration of collective agreements, or the adjustment and settlement of grievances and disputes. We do not understand * * * that there is before us the matter of expenditures for activities in the area between the costs which led directly to the complaint as to 'free riders,' and the expenditures to support union political activities."

[15] Wellington, op. cit. supra note 4, states (p. 70):

"If in the future the Court must decide whether the expenditure of money by a union is for political or collective bargaining purposes, *i.e.*, in the language of *Hanson*, whether the money is used for purposes 'germane to collective bargaining,' the Court must measure union action in each case against nonexistent standards, in the same fashion that courts in the past tried to determine whether unions seeking various goals were privileged to use various types of concerted action.

"Thus, it seems that the Court, in *Street*, unhappily has contrived to entangle itself in legislating about collective bargaining * * *."

The avoidance of constitutional doubts will provide no guide, for the doubts are ill defined and insubstantial.

Again, although the Court purported to base its decision on the legislative history of § 2, Eleventh, and especially on the supposed concern of Congress that collective bargaining and contract administration are peculiarly expensive in the railroad industry, the argument will no doubt be made that constitutional doubts require that § 8(a)(3) of Taft-Hartley be given the same tortured construction as § 2, Eleventh of the Railway Labor Act. Will the Court then undertake to read into § 8(a)(3), first, an authorization to spend union shop dues money, and, secondly, various restrictions on that authorization? [16]

On the basis of amorphous constitutional doubts the Court has undertaken to regulate the use of union funds. We submit that that is not properly a function of the Court, or one for which it is well qualified. If the use of union funds is to be regulated, it is for Congress to do it. It

> "is a complex and highly political problem. It necessarily requires investigation and regulation more appropriately conducted by the legislature than by the courts." 61 Col. L. Rev. 1513, 1518 (1961).[17]

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[16] Cf. Wellington (p. 70):

"It will not be long before a dissenting employee asserts that the Taft-Hartley's union shop is unconstitutional. When that happens it will be difficult indeed for the Court to read Taft-Hartley in the way in which it has read the Railway Labor Act. As we have seen, it cannot be said that in 1947 Congress was cutting back on a freedom it had earlier granted dissenting employees. Nor can it be asserted that unions regulated by Taft-Hartley had traditionally been uninterested in union security. These propositions were made by the *Street* majority about congressional performance in 1951, and about unions regulated by the Railway Labor Act. They were advanced by that majority as weighty reasons for its reading of Section 2, Eleventh. They are not available as bases for reaching a like conclusion in a Taft-Hartley case. The constitutional questions left unresolved by *Street* will yet have to be resolved by the Court."

[17] To the same effect, see Wellington, p. 72.

The Congress has imposed certain restrictions on union expenditures for political purposes, and has considered others. Section 304 of Taft-Hartley, now § 610 of Title 18, prohibits a union (or corporation) from making a contribution or expenditure in connection with a federal election. This provision applies to all unions, including those subject to the Railway Labor Act, and to all union funds, whether or not dues money paid under union security clauses.

In 1956 Senators Curtis and Goldwater introduced a bill, S. 3074, which, like the Court's decision in *Street*, imposed special restrictions on the use of funds for political purposes by unions having union security agreements. This bill tightened up § 304 of Taft-Hartley as to unions having union secuirty agreements, and also amended § 8(a)(3) of Taft-Hartley to prohibit a union from making a union security agreement if it had within two years made a contribution or expenditure in connection with a federal election. The bill did not pass.

In *Street* (367 U.S. at 770, note 19) the Court refers to a 1958 proposal by Senator Potter to restrict the use of union shop dues, which failed of adoption. However, it does not refer to § 501(a) of the Landrum-Griffin Act,[18] enacted the following year, which has greater significance. This provision declares that the officers of a union occupy positions of trust, and that—

> "* * * It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder * * *."

When the predecessor of this provision was introduced

[18] Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 535, 29 U.S.C. § 501(a)).

by Senator McClellan, the question arose whether the Senator was seeking to restrict the purposes for which unions could spend money, and in particular whether he was seeking to regulate the use of union funds for political purposes? (Senator McClellan was known to take a certain interest in the subject.)

The following colloquy ensued (105 Cong. Rec. 6525):

> "Mr. KENNEDY. * * * I am concerned lest we place a restraint on the purposes for which money may be properly and honestly spent, in our attempt to safeguard union funds.
>
> "Mr. McCLELLAN. I do not believe we are proposing to do that. It is not my purpose to do that.
>
> "A union may wish to conduct an educational program. I am not opposed to such programs. I think a union should have the right to conduct educational programs. I never wish to deny to a union the right to participate in the affairs of society and of our country.
>
> "It is possible that at times the right may be abused, but I defend the right of a union, a corporation, or any other institution, to discuss any proper subject, from the standpoint of education, from the standpoint of enlightenment, or from the standpoint of conveying its views on any public issue. I believe in that right. I would never take it away. I am not striving to do anything of the kind. I am merely seeking to firm up and nail down the fiduciary responsibilities which I believe union officers should have in the financial field."

Subsequently Senator McClellan was even more explicit (105 Cong. Rec. 6526):

> "* * * If the Senator has any thought that I am trying to interfere with COPE, [19] that is not correct. There may be amendments directed to that point, and to deal with that direct question. However, I am not offering my amendment on the direct question of political contributions. Everyone knows my views on that subject, I assume. This is not a drive at that situation."

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[19] The reference is to the AFL-CIO's Committee on Political Education, *i.e.*, its political arm.

Thus by § 501(a) of Landrum-Griffin the Congress imposed on unions the requirement that they expend their funds in accordance with their constitutions and bylaws, but the Congress did not restrict the purposes for which unions might spend their funds if their constitutions and bylaws so authorized. In particular Congress did not add to the restrictions imposed by § 304 of Taft-Hartley on the use of union funds for political purposes.

This Court in *Street* has thus undertaken to do what Congress has several times considered but decided against doing. The Court has legislated restrictions on the use of union funds. Insofar as the *Street* decision rests on interpreting § 2, Eleventh as restricting the uses to which union funds may be put, we submit that the Court has usurped the role of Congress.[20]

4. *The Power to Bind Dissenters.* A possible basis for finding governmental action, which may well be implicit in the Court's opinion in *Street*, is the status as exclusive bargaining representative which the law confers on a union chosen by a majority of the employes. Under the system of collective bargaining which developed in this country and was ultimately embodied, in 1926 and 1935, in federal statutes,[21] if a majority of employes in a plant or other unit choose to be represented by a union the employer must bargain with it and the agreement reached is binding on all the employes in the unit whether they join the union or not or like the contract or not. As the Court said in *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 202:

"* * * Congress has seen fit to clothe the bargaining

[20] Wellington, op. cit. supra note 4, puts it this way (p. 73):

"That interpretation was unfortunate because in one way or another it constituted judicial legislation about collective bargaining. The courts have never done this well. Judges do not have standards by which to test union action. They cannot ascertain union needs. They act half in blindness, and the results are seldom happy."

[21] *E.g.*, the Railway Labor Act and the National Labor Relations Act.

> representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents * * *."

This power to execute a collective bargaining agreement which is binding on dissenters, includes the power to execute a contract requiring membership as a condition of employment subject, of course, to the statutory restrictions.

While this system could have developed, and did, without statutory authorization or sanction, the federal laws now provide an element of compulsion—or governmental action—in that they require employees to abide by the system whether they wish to or not. Cf. *J. I. Case Co.* v. *NLRB*, 321 U.S. 332. This provides some basis for concluding that the functioning of a union as exclusive bargaining representative involves some degree of governmental action.

However, we submit that this type of governmental action is not sufficient to give rise to the serious constitutional doubts which assertedly support the *Street* decision.

In the first place, the degree of governmental action involved is rather slight. It has not been considered sufficiently substantial to require that a union admit to membership all the employees it represents,[22] though that would seem to be a minimum consequence of regarding collective bargaining as imbued with governmental character. This Court itself remarked in *American Communications Assn.* v. *Douds*, 339 U.S. 382, 402:

> "We do not suggest that labor unions which utilize the facilities of the National Labor Relations Board become Government agencies or may be regulated as such."

In the second place, if the binding of dissenters by a collective bargaining agreement constitutes governmental ac-

[22] Taft-Hartley Act, § 8(b)(1)(A); *Oliphant* v. *Brotherhood of Locomotive Firemen and Enginemen*, 262 F. 2d 359 (6th Cir. 1958), *certiorari denied*, 359 U.S. 935; see *Steele* v. *Louisville & N. R. Co.*, 323 U.S. 192, 204. The AFL-CIO has supported legislation which would require unions to admit all qualified applicants, but no such legislation has as yet been enacted.

tion, it is not merely the union security provisions which bind dissenters, but a wide range of other provisions.

Under a system of collective bargaining the contract which the union negotiates may determine all the major terms of a worker's industrial life. It may determine whether he gets paid $3.00 an hour or $1.25 an hour; whether he works a 35 hour week or a 40 hour week; whether he is subject to discharge only for cause, with the right to go to arbitration, or at the whim of a foreman; whether layoffs are made according to seniority or favoritism; etc. The collective agreement binds dissenters in all of these matters. In this context a requirement that the workers pay dues is an integral part of the whole concept of collective bargaining. As a matter of philosophic consistency it is scarcely possible to accept collective bargaining which gives the union the power to execute a contract regulating every aspect of the worker's industrial life, while rejecting compulsory dues payment.[23] A worker is subjected to a majority rule as a citizen of the industrial community, and it is not unreasonable to require him to assume some of the responsibilities of citizenship.

It is not merely, or even principally, the union security

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[23] Put another way, collective bargaining itself puts a worker under compulsion to join the union. The fact that the union will negotiate the contract which regulates the incidents of his industrial life itself puts him under powerful compulsion to join the union, since that is the only way he can have a voice in determining the provisions of the collective agreement. A senior employee who wants the union to forego a wage increase in favor of improved pensions not only has to join the union but to be active in it if he is to have any hope of making his views prevail. That sort of compulsion to join is inherent in collective bargaining.

On approximately that theory the Supreme Court of Louisiana ruled that under the state right-to-work law a collective bargaining agreement could not bind non-members. *Piegts* v. *Meat Cutters, Local 137*, 228 La. 131, 81 So. 2d 835, 36 LRRM 2261 (La. Sup. Ct. 1955). We are not, of course, suggesting that the Louisiana Court was correct—only that it was logical.

provisions of a contract, or the way dues money is spent, that sometimes gives rise to dissent. As shown supra, pp. 7-8, all of the plaintiffs in this case were very vague as to any disagreements with the unions on legislative or political issues. On the other hand, two of the plaintiffs complained that they had been transferred from monthly to daily rated jobs as a result of collective bargaining contracts (R. 45, 49-50), while another complained that a reduction in working hours negotiated by the union had, even though accompanied by an increase in wage rates, reduced his take home pay. (R. 72-74.) It is inevitable that in every dispute over seniority some employees will dissent from the union's position.

Thus the proposition, that the binding of dissenters by a collective bargaining agreement constitutes governmental action, proves too much, for it would subject innumerable provisions of every agreement to constitutional tests. That concept was rejected in *NLRB* v. *Jones & Laughlin Steel Corp.* 301 U.S. 1; *J. I. Case Co.* v. *NLRB*, 321 U.S. 332, and numerous other cases. As the Court said in *J. I. Case*, 321 U.S. at 339:

> "* * * The workman is free, if he values his own bargaining position more than that of the group, to vote against representaton: but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result."

And cf. *Ford Motor Co.* v. *Huffman*, 345 U.S. 330.[24]

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[24] Wellington states (pp. 72-73):

"* * * no existing legal doctrine compels the Court to test union action by constitutional standards. Rather, it would require an extension of existing doctrine, doctrine contained in the landmark cases of *Shelley* v. *Kraemer*, *Smith* v. *Allwright*, and *Terry* v. *Adams*, to permit such a result. While an extension of this doctrine to cover union action would not be an illogical development of constitutional law, it would, if the above considerations are valid, be a plainly unwise development." (Footnotes omitted.)

In the third place, in *Street* the Court seems to assume that, though dissenters may constitutionally be required by a collective agreement to pay dues, the compulsion involved colors the expenditure of the dues money, so that expenditures must meet tests imposed by the Constitution, and not merely by statute or by the union's own constitution and bylaws. This assumption seems extravagant, in view of the remote and tenuous character of the governmental action involved.

CONCLUSION

We submit that there is no doubtful constitutional question in this case because no substantial governmental action is involved in the execution of a union shop agreement, and no governmental action whatever is involved in a union's use of its funds for political or any other activities. There are only "questions not of constitutional validity but of policy in a domain of legislation peculiarly open to conflicting views of policy." Frankfurter, J., concurring in *Railway Employes' Department* v. *Hanson*, 351 U.S. 225, 239. Those questions of policy are properly for the Congress, not the Court.

Since there are no substantial constitutional doubts to be avoided, there is no basis for the tortured construction given section 2, Eleventh of the Railway Labor Act in the *Street* case.

However, even if the Court adheres to *Street*, as we think it should not, the decision below is, we have sought to show, not sustainable under *Street*.

For the foregoing reasons, and for the reasons stated in the brief for petitioners, we submit that the judgment of the Supreme Court of North Carolina should be reversed and the case remanded to that Court, with instructions to reverse the judgment of the Superior Court of Mecklenburg County with remittitur to the Superior Court directing it

to vacate its judgment of May 15, 1958 (R. 22-23), and to dismiss the case.

Respectfully submitted,

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